

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENERITO FELIPE GABALDON,

Petitioner,

v.

J. PICKETT, Warden,

Respondent.

No. 2:20-cv-2489-EFB P

ORDER

Mr. Gabaldon is a state prisoner proceeding without counsel. This action was opened when he filed a document titled “Notice of Appeal.” ECF No. 1. He has not properly commenced a civil action. To commence a civil action, a party must file a complaint or a petition. Fed. R. Civ. P. 3; Rule 3, Rules Governing § 2254 Cases; *Woodford v. Garceau*, 538 U.S. 202, 203 (2003). Mr. Gabaldon’s “Notice of Appeal” constitutes neither.

If Mr. Gabaldon wishes to challenge a judgment of conviction entered against him in state court, he must file an application for a writ of habeas corpus using this court’s form petition. In addition, Mr. Gabaldon must either file an in forma pauperis affidavit or pay the required filing fee (\$5.00). *See* 28 U.S.C. §§ 1914(a); 1915(a). Until Mr. Gabaldon submits a petition and either pays the filing fee or meets the requirements of 28 U.S.C. § 1915(a), there is simply no case before the court.

////

1 Additionally, the court notes that Mr. Gabaldon filed an unsigned motion to appoint
2 counsel. ECF No. 2. Rule 11 of the Federal Rules of Civil Procedure requires that “[e]very
3 pleading, written motion, and other paper . . . be signed by at least one attorney of record in the
4 attorney’s name—or by a party personally if the party is unrepresented.” Fed. R. Civ. P. 11(a).

5 Accordingly, it is hereby ORDERED that:

6 1. The Clerk of the Court shall send to Mr. Gabaldon the court’s forms for application for
7 writ of habeas corpus and application for leave to proceed in forma pauperis.


8 2. Within 30 days from the date of service of this order, Mr. Gabaldon may either pay the
9 \$5 filing fee or submit a complete application for leave to proceed in forma pauperis using the
10 form provided.

11 3. Within 30 days from the date of service of this order, Mr. Gabaldon may file a petition
12 for writ of habeas corpus using the form provided.

13 4. Mr. Gabaldon’s unsigned motion to appoint counsel (ECF No. 2) is disregarded and
14 the Clerk is directed to terminate ECF No. 2.

15 5. Failure to comply with this order may result in this case being closed.

16 DATED: December 21, 2020.

17 
18 EDMUND F. BRENNAN
19 UNITED STATES MAGISTRATE JUDGE
20
21
22
23
24
25
26
27
28